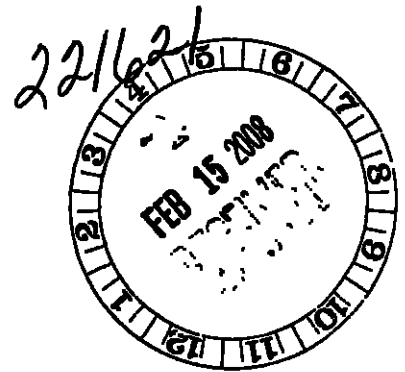


**UNITED STATES OF AMERICA  
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No 35087



---

**CANADIAN NATIONAL RAILWAY COMPANY  
AND GRAND TRUNK CORPORATION  
— CONTROL —  
EJ&E WEST COMPANY**

---

ENTERED  
Office of Proceedings

FEB 15 2008

Part of  
Public Record

**ENVIRONMENTAL COMMENTS  
OF NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Railway Company ("NS") respectfully submits these comments in response to the December 21, 2007 decision of the Board's Section of Environmental Analysis ("SEA") requesting comments on the scope of the environmental impact statement ("EIS") to be prepared in this proceeding.

NS submits these comments to urge the Board to consider the important national need for rail capacity growth when weighing the environmental impacts of proposed transactions and potentially costly mitigation measures. The Board's statutory obligations require it to consider the needs of the national transportation network—including the urgent need for capacity improvements—and the Board should not elevate local environmental concerns to a place where they trump the national interest.

The Board's duty under the National Environmental Policy Act ("NEPA") to consider the environmental impact of a transaction is only one of its competing statutory obligations. NEPA requires the Board to take a "hard look" at environmental consequences before taking a major action. *See Baltimore Gas & Elec Co v National Res Defense Council*, 462 U S 87 (1983). Thus, the Board is only obligated to *consider* the environmental impacts of

major actions, it is not required to mitigate every conceivable environmental concern raised by a party. This is important because of the other requirements Congress has imposed to approve transactions that do not involve the merger or control of two Class I railroads where the public interest in the transaction outweighs any anticompetitive effects, *see* 49 U.S.C. § 11324(d), and to carry out the rail transportation policy to “ensure the development and continuation of a sound rail transportation system.” 49 U.S.C. § 10101(4). The EIS process should not overshadow these congressional mandates. While the Board has a duty to consider environmental impacts and to impose appropriate mitigation when necessary, the EIS process should not become the tail that wags the dog by or distract the Board from its core statutory obligation to carry out that national rail transportation policy.

In particular, the Board should be mindful of the pressing national need for increased rail capacity. As the Board has recognized, there is a critical need for capacity improvements to accommodate the projected steep increases in rail traffic over the coming decades. *E.g.*, Ex Parte 671, *Rail Capacity and Infrastructure Requirements*, (Mar. 6, 2007). The American Association of State Highway and Transportation Officials projected that freight tonnage will grow by almost 57 percent between 2000 and 2020. AASHTO, *Freight Rail Bottom-Line Report*, at 2. The U.S. Department of Transportation has estimated that rail freight traffic will grow by 35% between 2005 and 2020, and that rail freight traffic could grow even faster if highway congestion drives more freight from trucks to rail. Ex Parte 671, Comments of U.S. Dep’t of Transp. at 3 (Apr. 11, 2007). Whichever estimate is correct, one thing is clear—railroads must add substantial additional capacity in order to handle these projected traffic increases. Solving these capacity constraints is not only important for network fluidity and traffic flow, it also has wide-ranging implications for public safety and for national

environmental policy Limited rail capacity will require more freight to move via truck transportation, with corresponding effects on both highway congestion and air quality

The need for rail capacity improvements is particularly acute in the Chicago area All but one of the Class I railroads have main lines and major yard facilities in the Chicago area, and commuter trains and Amtrak trains operate over many of the key rail corridors. Significant investments in capacity are required in the coming years Many of those investments are contemplated in the Chicago Region Environmental and Transportation Efficiency Program (CREATE) plan, a consensus plan for a series of infrastructure projects to improve routings, freight flows, and the efficiency of the rail network The CREATE plan was developed by all the major railroads that operate in Chicago, the City of Chicago, the State of Illinois, METRA, and Amtrak through a unique and groundbreaking process to develop the best plan to solve capacity constraint issues in the Chicago region This plan calls for \$1.5 billion of private and public investment—much of which has yet to be committed—and will require significant capital expenditures by the City, the State, and the Federal government, and the rail carriers in the Chicago area

Railroads do not have unlimited funds for capital expenditures. Indeed the recent study entitled “National Rail Freight Infrastructure Capacity and Investment Study,” which was prepared by Cambridge Systematics, demonstrated that the capacity needs of the rail industry over the next 28 years are greater than the funds the study estimates the railroads will have available See National Rail Freight Infrastructure Capacity and Investment Study at 7-6. Therefore, when the Board considers proposed environmental mitigation measures it should balance the need for those measures and their cost against the critical national need for investment in capacity improvement projects Put differently, the Board should consider the

*national* effect on the rail network and on the environment from constrained rail capacity—not simply claimed environmental impacts on the immediate local area. The Board certainly should be responsive to local concerns, but it is responsible for the national transportation network and in the environmental phase of this proceeding it should give appropriate weight to those national needs before imposing any proposed mitigation measures.

Respectfully Submitted,




James A. Hixon  
William A. Galanko  
George A. Aspatore  
John M. Scheib  
Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510

G. Paul Moates  
Matthew J. Warren  
SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
Washington, DC 20005  
(202) 736-8000  
(202) 736-8711 (Fax)

*Counsel to Norfolk Southern Railway Company*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of February, 2008, I served by first class mail, postage prepaid, a copy of the foregoing on all parties of record listed in the official service list in this proceeding

  
\_\_\_\_\_  
Matthew Wolfe